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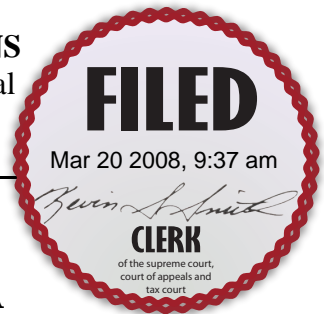
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**IN THE
COURT OF APPEALS OF INDIANA**

DENISE PATTON,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 20A05-0708-CV-486

APPEAL FROM THE ELKHART SUPERIOR COURT NO. 1
The Honorable Evan S. Roberts, Judge
Cause No. 20D01-0707-MI-17

March 20, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Denise Patton (Patton), appeals the trial court's Order finding her in contempt and placing her in custody for thirty days.

We reverse and remand.

ISSUE

Patton presents one issue for our review: Whether the trial court erred when finding her in indirect contempt.

FACTS AND PRODECURAL HISTORY

On February 20, 2007, Patton pleaded guilty to domestic battery, as a Class A misdemeanor, Ind. Code § 35-42-2-1.3, and theft, as a Class D felony, I.C. § 35-43-4-2. As a part of her sentence, Patton was scheduled to serve time on home detention. On July 9, 2007 the trial court held a hearing wherein it addressed several allegations of curfew violations of Patton's home detention requirements. Patton contended that her curfew violation reports were due to electrical problems in her home that would cause the electrical monitoring equipment to read incorrectly.

After arguments from the State and Patton, the trial court ordered Patton to submit to a urinalysis screening for drugs. Specifically, the trial court instructed Patton to go directly to the probation department located within the courthouse. Instead of going directly to the probation department, Patton left the building. She was apprehended outside of the courthouse and brought back in before the trial court. The trial court was informed of what had happened at a side bar conference. The trial court asked Patton why she had left the

building and she explained that she thought she needed to get identification for the drug screen. The trial court had the sheriff take Patton into custody and take her to directly to the probation department for the drug screen.

A female probation officer was present with Patton when she produced the urine sample and did not remove handcuffs that had been put on Patton. Patton made offensive remarks to the probation officer while this was occurring.

That same day, the trial court went back on the record and was informed by the State that Patton “tested clean, but had some other issues.” (Appellant’s App. p. 24). The trial court asked Patton what had happened, and she replied: “I just asked her if they were going to stand in there, because they wouldn’t uncuff me and I was like, ‘Well, what are you guys gonna do[], hold the cup for me? You guys aren’t gay, are you?’” (Appellant’s App. p. 25).

The trial court then said that it was going to hold a contempt hearing and called on Theresa Drust, the probation officer, who testified, “She asked if I was a dyke, your Honor. That was her term.” (Appellant’s App. p. 25). “There was a litany of comments from the time we left the courtroom to the time she got to the probation office I don’t remember them, the one that stood out is the one I shared with the Court.” (Appellant’s App. p. 26). The trial court then asked for argument on indirect criminal contempt.

The trial court summarized its rationale and determination by stating:

Ms. Patton, you quite frankly would’ve walked out of here based upon that negative drug test. [] But clearly your conduct—not only immediately after leaving the courtroom and heading out of the courthouse, not to take a drug test or to get an identification card [] was bad enough. Frankly, you were going to be cut some slack on that. However, your conduct in making references to the probation officer will not be tolerated. The [trial court] is

looking at Mitchell versus Stevenson, 677 N.E.2d 551 []: “Indirect criminal contempt is the willful disobedience of any lawfully entered [c]ourt [o]rder of which the offender had notice. Indirect contempt arises from the conduct which does not occur in the presence of the [c]ourt including the failure of a party to obey a [c]ourt order.” Ms. Patton, you have a right with indirect criminal contempt or indirect civil contempt to counsel. I find that you have been represented by counsel in this case. I find your conduct atrocious, offensive and will not be tolerated by the [c]ourt. As a result of your conduct outside of this court, the [c]ourt sentences you to thirty days’ incarceration in the Elkhart County Security Center. At the conclusion of that, which you will be sentenced without the—without the benefit of any goodtime credit, you will go back on home detention. Ma’am, your mouth is what’s putting you in jail, not the fact that you used to use drugs.

(Appellant’s App. p. 27-28). The trial court entered a written order finding Patton in indirect contempt of court.

Patton now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION¹

Patton contends that the trial court failed to follow the proper procedure when finding her in indirect contempt. The determination of whether a party is in contempt of court is a matter within the sound discretion of the trial court. *Jones v. State*, 847 N.E.2d 190, 199 (Ind. Ct. App. 2006), *trans. denied*. We will reverse the trial court’s determination only if the court has abused its discretion. *Id.* A court has abused its discretion when its decision is

¹ The State contends that this issue is moot because Patton’s incarceration terminated before she filed her Appellant’s Brief. We acknowledge that the State’s contention is likely due to the duration of the incarceration Patton was ordered to serve when compared to the time it took for her counsel to file her Appellant’s Brief; however, the State has filed no evidence supporting its contention. Moreover, the finding of contempt on the part of Patton could have future collateral consequences. *See Wright v. State*, 766 N.E.2d 1223, 1237 (Ind. Ct. App. 2002) (holding that previous contempt finding was properly considered as an aggravator). Therefore, the present appeal is not moot. *See Hamed v. State*, 852 N.E.2d 619, 622 (Ind. Ct. App. 2006) (considering an appeal of a sentence which had already been served because of possible negative collateral consequences). As such, we consider Patton’s appeal on its merits.

against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.*

Contempt can be either direct or indirect. Direct contempt includes those actions occurring in or near the court, interfering with the business of the court, and to which the judge has personal knowledge. *Hopping v. State*, 637 N.E.2d 1294, 1296 (Ind. 1994). Courts have inherent power to punish summarily acts of direct contempt without formal charges or an evidentiary hearing. *Davidson v. State*, 836 N.E.2d 1018, 1020 (Ind. Ct. App. 2005). The purpose of this power is to enable the court to protect itself against gross violations of decency and decorum. *Id.* Acts of indirect contempt are those that undermine the activities of the court but fail to satisfy one of the direct contempt requirements. *Id.* Generally, a person who willfully disobeys any order lawfully issued by any court of record or by the proper officer of the court is guilty of indirect contempt. *Id.*

Further, contempt proceedings may be categorized as civil or criminal, according to the nature and purpose of the sanction imposed. *Jones*, 847 N.E.2d at 199. Whether the conduct is categorized a civil contempt or criminal, the trial court must still provide the defendant the same statutorily prescribed due process protections. *Id.* Therefore, for our analysis here, we conclude that it is inapposite whether the contempt was civil or criminal.

At the time when the trial court held the contempt proceeding, Patton had already performed the task that had been ordered by the trial court: providing a urine sample for a drug screen. Thus, any immediate threat to the integrity of the court had passed, and the trial

court was correct in evaluating Patton's behavior to determine whether Patton was guilty of indirect contempt. *See Davidson*, 836 N.E.2d at 1023.

However, upon reviewing the record of proceedings, we conclude that the procedure provided by the trial court fell short of that owed to Patton in an indirect contempt proceeding. Indiana Code section 34-47-3-5 provides certain procedures which must be provided to persons charged with indirect contempt:

(a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:

(1) before answering the charge; or

(2) being punished for the contempt;

to be served with a rule of the court against which the contempt was alleged to have been committed.

(b) The rule to show cause must:

(1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;

(2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and

(3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

There is no evidence in the record that Patton was served with a rule to show cause clearly and distinctly setting forth the facts that are alleged to constitute her actions of contempt. To the contrary, it is apparent that the trial court asked Patton questions concerning her

contemptuous behavior prior to its statement of its intention to pursue contempt proceedings. Therefore, we conclude that the trial court erred when it proceeded with contempt proceedings against Patton without her first being presented with a rule to show cause containing specific allegations of Patton's actions which constituted the contempt.

Additionally, Patton argues that the trial court erred by failing to appoint a special judge to hear the contempt proceedings. Indiana Code section 34-47-3-7 requires trial courts considering indirect contempt proceedings to appoint special judges, unless the indirect contempt grows out of an alleged act of "willfully resisting, hindering, delaying, or disobeying any lawful process or order of court."

In *Davidson*, 836 N.E.2d at 1019-20, we analyzed a contempt finding where the contemnor had repeatedly cursed at a probation officer and absolutely refused to sign up for probation as required by the trial court. Just as here, we remanded for proceedings conducted pursuant to Indiana Code chapter 34-47-3. *Id.* at 1024. In addition, we noted that "because this case 'grow[s] out of willfully resisting, hindering, delaying or disobeying any lawful process or order of court,' a special judge does not have to be appointed." *Id.* However, it is less clear whether Patton willfully resisted, hindered, delayed or disobeyed the lawful order of the court. Therefore, we reserve for the trial court the task of reviewing the rule to show

cause and the allegations contained therein to determine whether the appointment of a special judge is necessary.

CONCLUSION

Based on the foregoing, we conclude that the trial court erred when it proceeded to consider charges of indirect contempt against Patton without Patton being first presented with a rule to show cause containing specific allegations of contemptuous behavior by Patton. Therefore, we remand for proceedings consistent with Indiana Code chapter 34-47-3.

Reversed and remanded.

KIRSCH, J., and MAY, J., concur.